

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
)  
PUBLIC UTILITIES COMMISSION )  
)  
Instituting a Proceeding to Investigate )  
Implementing a Decoupling Mechanism for )  
Hawaiian Electric Company, Inc., Hawaii )  
Electric Light Company, Inc., and Maui )  
Electric Company, Limited. )  
)  
\_\_\_\_\_ )

DOCKET NO. 2008-0274

PUBLIC UTILITIES  
COMMISSION

2008 NOV 17 P 4:10

FILED

**TAWHIRI POWER LLC'S**  
**MOTION FOR ENLARGEMENT OF TIME TO FILE**  
**MOTION TO INTERVENE,**  
**DECLARATION OF COUNSEL, VERIFICATION,**  
**EXHIBITS "A" - "C"**  
**AND**  
**CERTIFICATE OF SERVICE**

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Attorneys for Tawhiri Power LLC

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of	)	
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Electric Light Company, Inc., and Maui	)	
Electric Company, Limited.	)	
_____	)	

**TAWHIRI POWER LLC'S**  
**MOTION FOR ENLARGEMENT OF TIME**  
**TO FILE MOTION TO INTERVENE**

TO THE HONORABLE PUBLIC UTILITIES COMMISSION OF THE STATE OF HAWAII:

MOVANT, TAWHIRI POWER LLC, a Delaware limited liability company ("Movant") hereby moves the Hawaii Public Utilities Commission ("Commission") for an order for an enlargement of time for Movant to file a Motion to Intervene in the above-referenced docket from November 13, 2008 to November 17, 2008 based on excusable neglect, pursuant to §§ 6-61-23(a)(1) and (b) and 6-61-41 of the Rules of Practice and Procedure before the Public Utilities Commission, Chapter 61 of Title 6 of the Hawaii Administrative Rules ("HAR").

1. Information Concerning Movant.

Movant is a Delaware limited liability company. Movant is a Qualifying Facility ("QF") that has a Power Purchase Agreement with Hawaii Electric Light Company, Inc<sup>1</sup>. Movant's full

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<sup>1</sup> See The Restated and Amended Power Purchase Contract for As-Available Energy between Hawaii Electric Light Company, Inc. and Apollo Energy Corporation, dated October 13, 2004 (the "RAC"). The RAC was approved by the Commission in Docket No. 04-0346, *In the Matter of the Application of Hawaii Electric Light Company, Inc. for Approval of a Restated and Amended Power Purchase Contract with Apollo Energy Corporation, and a Commission determination that the HELCO-Owned Interconnection Facilities can be constructed above the surface of the ground, pursuant to Hawaii Revised Statutes sec. 269-27.6(a)*. On December 5, 2005, Apollo Energy

name and business address is as follows:

Tawhiri Power LLC  
551 Pilgrim Drive, Suite D  
Foster City, California 94404

All correspondence related to this Docket should be sent to:

Sandra-Ann Y.H. Young  
Attorney at Law, A Law Corporation  
1050 Bishop Street, #514  
Honolulu, Hawaii 96813

Harlan Y. Kimura  
Attorney at Law, A Law Corporation  
Central Pacific Plaza  
220 South King Street, Suite 1660  
Honolulu, Hawaii 96813

and

Mr. Anthony B. Pace  
Tawhiri Power LLC  
551 Pilgrim Drive, Suite D  
Foster City, California 94404

2. Procedural History of this Docket.

The Commission initiated this docket by its Order Initiating Investigation filed on October 24, 2008 to address the issues related to implementation of a decoupling mechanism for the HECO Companies ("Order").<sup>2</sup> In the Order, the Commission named the HECO Companies and the Consumer Advocate as parties to the proceeding and invited any interested individual, entity, agency, or community or business organization, to file a motion to intervene or participate without intervention in the Docket pursuant to HAR Chapter 6-61.<sup>3</sup> However, public notice of

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Corporation's interest under the RAC was assigned to Movant. Consequently, Movant has replaced Apollo Energy Corporation ("Apollo Energy") as a party to the RAC.

<sup>2</sup> Id.

<sup>3</sup> Id.

this docket did not occur until October 29, 2008. A copy of the Commission's Daily Activity Report containing the entry for the Order was only made available to the general public on October 29, 2008 as indicated in attached Exhibit "A".<sup>4</sup>

3. Basis for Movant's Motion.

The basis for this Motion is that Movant has filed simultaneously with this Motion, Movant's Motion to Intervene in the docket.<sup>5</sup> It is Movant's position that its Motion to Intervene is timely because public notice of the docket did not occur until October 29, 2008 when the Commission included an entry on the Order in its Daily Activity Report. Thus, Movant should have twenty (20) days from when the public notice was available instead of twenty (20) days from when the Order Initiating the Investigation was issued. Since public notice was not made available through the Commission's Daily Activity Report until October 29, 2008<sup>6</sup>, Movant should have until November 18, 2008 to file its Motion to Intervene.

To not allow Movant to file its Motion to Intervene would deprive Movant of its due process rights. Under current Commission procedures, the only way that Movant is able to receive notice of new dockets that are initiated at the Commission is to physically go to the Commission and review the Daily Activity Report. In the instant case, the Daily Activity Report did not include the Order Initiating the Investigation until October 29, 2008. Thus, Movant

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<sup>4</sup> The Commission did announce, "PUC opens proceeding relating to Decoupling" on its website, but it appears that the announcement did not appear until October 28, 2008. See copy of webpage attached at Exhibit "B". Even if the announcement occurred prior to October 28, 2008, the webpage is not the official public notice. The website itself contains the following Disclaimer Notice, "The Hawaii Public Utilities Commission's web site, [www.hawaii.gov/budget/puc](http://www.hawaii.gov/budget/puc), including the information found on the web site, is provided as a public service, and should not be construed as official government records. The information contained on the web site is dynamic and will change over time. Users of the web site are therefore fully responsible for determining the accuracy, completeness, and/or suitability of the information." Id.

<sup>5</sup> A copy of Movant's Motion to Intervene is attached as Exhibit "C".

<sup>6</sup> The Commission's Daily Activity Report for October 23, 2008, was not printed until October 27, 2008 and did not include the Commission Order Initiating this docket. See Declaration of Counsel at 1. Also, it is clear that the Commission's Daily Activity Reports are not available daily because the Commission's Daily Activity Report for October 27, 2008 was not printed until October 29, 2008, and only one (1) minute after the Daily Activity Report for October 24, 2008. See Declaration of Counsel at 1.

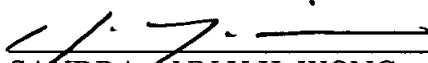
should be given the full 20 days from October 29, 2008 to file its Motion to Intervene. To not permit the Movant the full 20 days would make a mockery of due process. For example, the Commission could initiate an order on Day 1, but not give public notice in its Daily Activity Report until Day 19; to require that all Motions to Intervene be filed on Day 20 after one day public notice would be an injustice and a violation of due process.

Thus, Movant position is that its Motion to Intervene is timely. However, if the Commission disagrees with Movant, Movant respectfully requests that the Commission grant its Motion for Enlargement of Time to file its Motion to Intervene based on excusable neglect since public notice of the Order Initiating the Docket was not made available to Movant until October 29, 2008, due to no fault of Movant.

#### CONCLUSION

WHEREFORE, Movant respectfully moves the Commission to find that its Motion to Intervene is timely, or, alternatively, to grant its Motion for Enlargement of Time to File Motion to Intervene.

DATED: Honolulu, Hawaii, November 17, 2008.

  
\_\_\_\_\_  
SANDRA-ANN Y.H. WONG,  
HARLAN Y. KIMURA

Attorneys for Movant  
Tawhiri Power LLC

STATE OF HAWAII )  
 ) ss  
CITY AND COUNTY OF HONOLULU )

1. I am one (1) of the attorneys of record for Movant Tawhiri Power LLC  
herein and made this declaration based upon personal knowledge gained in that capacity.

a. "Daily Activity Report As of 10/23/2008" was printed on October 27, 2008 at 7:39:43 a.m. ("10/23/2008 Report");

b. "Daily Activity Report As of 10/24/2008" was printed on October 29, 2008 at 11:04:44 a.m. ("10/24/2008 Report");

c. "Daily Activity Report As of 10/27/2008" was printed on October 29, 2008 at 11:05:23 a.m. ("10/27/2008 Report"); and

d. "Daily Activity Report As of 10/28/2008" was printed on October 30, 2008 at 8:21:17 a.m. ("10/28/2008 Report").

3. According to my inspection of the Binder, the first time the public was made aware of Docket No. 2008-0274 issued by the Hawaii Public Utilities Commission on October 24, 2008 (“Decoupling Docket”) was the 10/24/2008 Report printed on **October 29, 2008 at 11:04:44 a.m.**

4. Attached to this Motion To Intervene is an electronic copy of the Verification of Mr. Anthony B. Pace, Chief Executive Officer of Apollo Energy

Corporation, the Managing Member of Tawhiri Power LLC, a Delaware limited liability company ("Verification"). The original of the Verification is being sent to me by Mr. Pace from Foster City, California, via courier and will be filed in this Docket upon my receipt of the same.

I, HARLAN Y. KIMURA, do declare under penalty of law that the foregoing is true and correct.

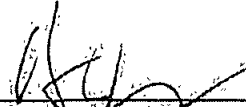
Dated at Honolulu, Hawaii, this 17<sup>th</sup> day of November 2008.

  
HARLAN Y. KIMURA

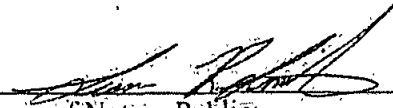
VERIFICATION

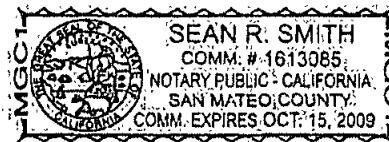
STATE OF CALIFORNIA                     )  
  )     SS:  
COUNTY OF SAN MATEO                 )

Anthony B. Pace, being first duly sworn, deposes and says: I am the Chief Executive Officer of Apollo Energy Corp. and Apollo Energy Corp. is the Managing Member of Tawhiri Power, LLC; that I have read the foregoing Motion for Enlargement of Time to File Motion to Intervene and that the same are true and correct to the best of my knowledge and that I have the authority to sign on behalf of Tawhiri Power, LLC.

  
\_\_\_\_\_  
ANTHONY B. PACE

Subscribed and sworn to before me:  
This, 17<sup>TH</sup> day of NOVEMBER, 2008

  
\_\_\_\_\_  
Name of Notary Public:  
Notary Public, State of California  
My commission expires: OCT. 15, 2009













## Daily Activity Report

As of 10/24/2008

## New Dockets

View	Docket Number	Title
 View Document	2008-0273	INSTITUTING A PROCEEDING TO INVESTIGATE THE IMPLEMENTATION OF FEED-IN TARIFFS. ORDER INITIATING INVESTIGATION; Public Utilities Commission; Docket No. 2008-0273
 View Document	2008-0274	INSTITUTING A PROCEEDING TO INVESTIGATE IMPLEMENTING A DECOUPLING MECHANISM FOR HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., AND MAUI ELECTRIC COMPANY, LIMITED. ORDER INITIATING INVESTIGATION; Public Utilities Commission; Docket No. 2008-0274
 View Document	2008-0275	APPLICATION FOR A MOTOR CARRIER CERTIFICATE IN THE 1-TO-7 PASSENGER CLASSIFICATION, ON THE ISLAND OF OAHU. Application for Motor Carrier Certificate or Permit for Passenger Classification
 View Document	2008-0276	APPLICATION FOR A MOTOR CARRIER CERTIFICATE IN THE 1-TO-7 PASSENGER CLASSIFICATION, ON THE ISLAND OF OAHU. Application for Motor Carrier Certificate or Permit for Passenger Classification
 View Document	2008-0279	Application
 View Document	2008-0278	Application for Motor Carrier Certificate or Permit for Property Classification
 View Document	2008-0277	APPLICATION FOR A MOTOR CARRIER CERTIFICATE IN THE 8-TO-25 PASSENGER CLASSIFICATION, ON THE ISLAND OF OAHU. Application for Motor Carrier Certificate or Permit for Passenger Classification

## Decisions and Orders

View	Docket Number	Title
 View Document	2008-0132	APPLICATION FOR APPROVAL TO COMMIT FUNDS IN EXCESS OF \$2,500,000 (EXCLUDING CUSTOMER CONTRIBUTIONS) FOR ITEM P0001390, WHITMORE SUBSTATION TRANSFORMER #1 AND 46 KV CIRCUIT. DECISION AND ORDER; Hawaiian Electric Company, Inc.; Docket No. 2008-0132

## Tariffs

View	Docket Number	Title
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## Other

View	Docket Number
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EXHIBIT "A"

2008-0186

## APPLICATION FOR APPROVAL OF POWER PURCHASE CONTRACT WITH KEAHOLE SOLAR POWER LLC AND APPROVAL TO INCLUDE THE PURCHASED ENERGY COSTS IN HAWAII ELECTRIC LIGHT COMPANY, INC.'S ENERGY COST ADJUSTMENT CLAUSE.

Letter From: Consumer Advocate To: Commission Re: Docket No. 2008-0186 - Application of Hawaii Electric Light Company, Inc. for Approval of Power Purchase Contract with Keahole Solar Power LLC and Approval to Include the Purchased Energy Costs in Hawaii Electric Light Company, Inc.'s Energy Cost Adjustment Clause

 View  
Document

2008-0253

## APPLICATION FOR EXPEDITED APPROVAL TO ENTER INTO A LONG-TERM LEASE OF PHOTOVOLTAIC EQUIPMENT

Letter From: Consumer Advocate To: Commission Re: Docket No. 2008-0253 - Application of Young Brothers, Limited for Expedited Approval to Enter into a Long-Term Lease of Photovoltaic Equipment

 View  
Document

2008-0000

## 2008 NON-DOCKETED ORDERS

Letter From: Consumer Advocate To: Commission Re: Protective Order 2008-PO-26 - In the Matter of the Application for a Protective Order for Annual Financial Report (AFR) of STi Prepaid, LLC for the Year Ended December 31, 2007

 View  
Document

2008-0150

## APPLICATION FOR A MOTOR CARRIER CERTIFICATE IN THE 8-TO-25 PASSENGER CLASSIFICATION, ON THE ISLAND OF OAHU.

Letter From: Commission To: D. Tawill Re: Docket No. 2008-0150 (David Tawill): Application for CPCN in the 8-25 Passenger Classification, on Oahu

 View  
Document

2008-0162

## APPLICATION FOR A MOTOR CARRIER CERTIFICATE IN THE 8-TO-25 PASSENGER CLASSIFICATION, ON THE ISLAND OF KAUAI, LIMITED TO PROVIDING TRANSPORTATION SERVICES WITHIN THE HANAIEI DISTRICT.

Letter From: Commission To: B. Lansing Re: Docket No. 2008-0162 (Whitey's Boat Cruises, Inc., dba Napali Catamarans): Application for CPCN in the 8-25 Passenger Classification, Limited to Providing Transportation Services within the Hanalei District, on Kauai

 View  
Document

2008-0159

## APPLICATION FOR A MOTOR CARRIER CERTIFICATE IN THE (1) 1-TO-7 PASSENGER CLASSIFICATION, AND (2) 8-TO-25 PASSENGER CLASSIFICATION, LIMITED TO UTILIZING MOTOR VEHICLES WITH A MAXIMUM MANUFACTURER'S SEATING CAPACITY OF 15 PASSENGERS, ON THE ISLAND OF HAWAII.

Letter From: Commission To: A. Ducusin Re: Docket No. 2008-0159 (AJ's Tour, LLC): Application for CPCN in the 1-7 and 8-25 (Limited to Seating Capacity of 15 Passengers) Passenger Classification, on Hawaii, Excluding Waipio Valley

 View  
Document

2008-0153

## APPLICATION FOR A MOTOR CARRIER CERTIFICATE IN THE 1-TO-7 AND 8-TO-25 PASSENGER CLASSIFICATIONS, ON THE ISLAND OF OAHU.

Letter From: Commission To: P. Johnson Re: Docket No. 2008-0153 (Deep Ecology, Inc.): Application for CPCN in the 1-7 and 8-25 Passenger Classification, on Oahu

 View  
Document

2008-0155

## APPLICATION FOR A MOTOR CARRIER CERTIFICATE IN THE 1-TO-7 PASSENGER CLASSIFICATION, ON THE ISLAND OF OAHU.

Letter From: Commission To: E. Fernandez Re: Docket No. 2008-0155 (Edilberto Fernandez): Application for CPCN in the 1-7 Passenger Classification, on Oahu

 View  
Document

2008-0271

## APPLICATION FOR A MOTOR CARRIER CERTIFICATE IN THE GENERAL COMMODITIES CLASSIFICATION, ON THE ISLANDS OF MAUI AND HAWAII.

Letter From: Commission To: Pacific Source, Inc. Re: Docket No. 2008-0271 - Application for Motor Carrier Certificate

 View  
Document

2008-0164

## APPLICATION TO EXTEND CERTIFICATE NO. 4826-C TO INCLUDE THE 8-TO-25 PASSENGER CLASSIFICATION, ON THE ISLAND OF MAUI.

Letter From: Commission To: N. Hoville Re: Docket No. 2008-0164 (Star Maui Limousine, Inc.): Application to Extend Cert. No. 4826-C to include the 8-25 Passenger Classification, on Maui





 View  
Document

2008-0134

## REQUEST TO SURRENDER CERTIFICATE OF REGISTRATION.

Letter From: Commission To: G Baer Re: Hawaii PUC Docket No. 2008-0134, WDIG Mobile, LLC ("WDIG")

 View  
Document

 View Document	2008-0081	NOTICE OF INTENT TO FILE AN APPLICATION FOR A GENERAL RATE INCREASE. APPLICATION FILED ON 8/4/08. Letter From: Commission To: Parties Re: Docket No. 2008-0081, The Gas Company, LLC ("TGC") - Application for a General Rate Increase, Filed on August 4, 2008; First Set of Comments
 View Document	2008-0083	NOTICE OF INTENT TO FILE A GENERAL RATE INCREASE APPLICATION. APPLICATION FILED ON JULY 3, 2008. Copy Letter From: I. Teruya-Mita To: K. Davoodi Re: Docket No. 2008-0083, HECO 2009 Test Year Rate Case, Responses to DOD Information Requests
 View Document	2008-0083	NOTICE OF INTENT TO FILE A GENERAL RATE INCREASE APPLICATION. APPLICATION FILED ON JULY 3, 2008. Copy Letter From: I. Teruya-Mita To: Consumer Advocate Re: Docket No. 2008-0083, HECO 2009 Test Year Rate Case, Responses to the Consumer Advocate's Information Requests
 View Document	2008-0059	APPLICATION FOR A MOTOR CARRIER CERTIFICATE IN THE 1-TO-7 PASSENGER CLASSIFICATION, ON THE ISLAND OF OAHU. Letter From: Commission To: LMJ Transport Services, LLC Re: Docket No. 2008-0059 - Application for Motor Carrier Certificate

<-----End of Report----->

The information contained in this report is provided for informational purposes and is not the Public Utilities Commission's official record of filings and other activities.



# Public Utilities Commission

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Regulates all franchised or certificated public service companies operating in the State; prescribes rates, tariffs, charges and fees; determines the allowable rate of earnings in establishing rates; issues guidelines concerning the general management of franchised or certificated utility businesses; and acts on requests for the acquisition, sale, disposition or other exchange of utility properties, including mergers and consolidations.

## • PUC Forms

- Telecommunications
- Petroleum (PIMAR)
- Transportation
  - Motor Carrier
  - Water Carrier
- Energy
- Water/Wastewater
- Complaints/Inquiries

- Reports to the Legislature
- Press Releases
- Statutes, Administrative Rules, and General Orders
- Decisions and Orders
- Telephone Directory
- Schedule of Hearings
  - Citation Hearings
  - Utility Hearings

## • Regulated Industry Information

- Energy
- Petroleum
- Telecommunications
- Transportation
- Water/Wastewater

- Hawaii One Call Center
- Western Conference of Public Service Commissions 2009 Conference

## • PUC Announcements

- PUC opens proceeding relating to Decoupling
- PUC opens proceeding relating to Feed-In Tariffs

Last Updated: October 28, 2008

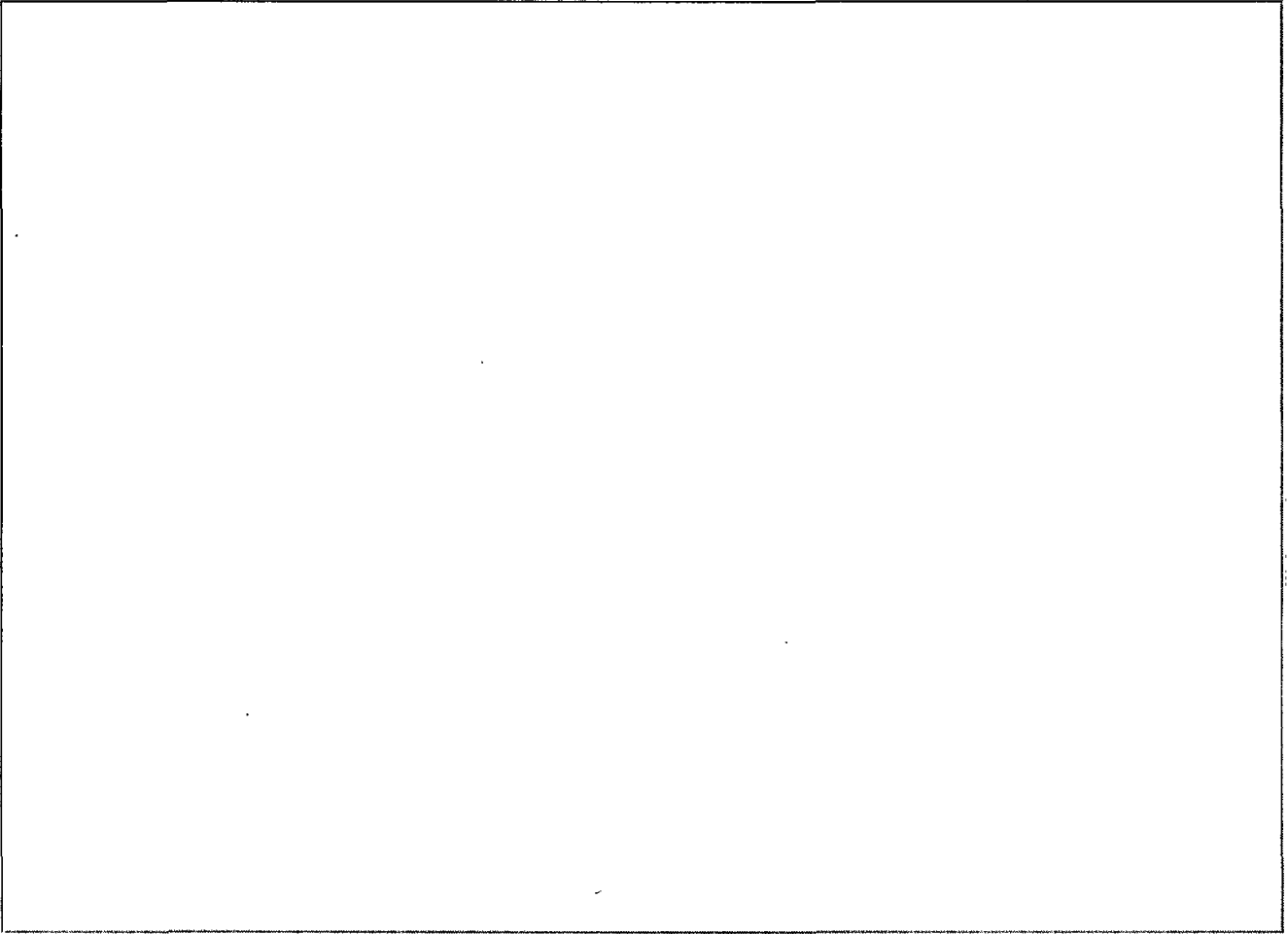
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# EXHIBIT "B"



BEFORE THE PUBLIC UTILITIES COMMISSION  
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Electric Light Company, Inc., and Maui	)	
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_____	)	

**TAWHIRI POWER LLC'S  
MOTION TO INTERVENE,  
DECLARATION OF COUNSEL, VERIFICATION  
AND  
CERTIFICATE OF SERVICE**

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Attorneys for Tawhiri Power LLC

**EXHIBIT "C"**

BEFORE THE PUBLIC UTILITIES COMMISSION  
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In the Matter of the Application of	)	
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PUBLIC UTILITIES COMMISSION	)	DOCKET NO. 2008-0274
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**TAWHIRI POWER LLC'S MOTION TO INTERVENE**

TO THE HONORABLE PUBLIC UTILITIES COMMISSION OF THE STATE OF HAWAII:

MOVANT, TAWHIRI POWER LLC, a Delaware limited liability company ("Movant") hereby moves the Hawaii Public Utilities Commission ("Commission") for an order allowing Movant to intervene as a party, pursuant to Hawaii Revised Statutes § 269-6 and §§ 6-61-41 and 6-61-55 of the Rules of Practice and Procedure before the Public Utilities Commission, Chapter 61 of Title 6 of the Hawaii Administrative Rules ("HAR").

Movant's substantial interests in this Docket are unique and will not be fully and adequately represented unless Movant is allowed to intervene on its own behalf. In addition, Movant has the experience and background to greatly assist the Commission in developing a sound evidentiary record and a Decoupling Mechanism that meets the objectives of the comprehensive agreement entered into on October 20, 2008 by the Governor of the State of Hawaii, the State of Hawaii Department of Business, Economic Development and Tourism, the State of Hawaii Division of Consumer Advocacy of the Department of Commerce and Consumer

Affairs and the Hawaiian Electric Companies ("Comprehensive Agreement").<sup>1</sup> In support of this Motion, Movant states as follows:

1. Procedural History of this Docket.

The Commission initiated this docket by its Order Initiating Investigation filed on October 24, 2008 to address the issues related to implementation of a decoupling mechanism ("Decoupling Mechanism") for the HECO Companies ("Order").<sup>2</sup> In the Order, the Commission named the HECO Companies and the Consumer Advocate as parties to the proceeding and invited any interested individual, entity, agency, or community or business organization, to file a motion to intervene or participate without intervention in the Docket pursuant to HAR Chapter 6-61.<sup>3</sup>

It is Movant's understanding that no action has commenced in this Docket.

2. Information Concerning Movant.

Movant is a Delaware limited liability company. Movant is a Qualifying Facility ("QF") that has a Power Purchase Agreement with Hawaii Electric Light Company, Inc.<sup>4</sup> Movant's full name and business address is as follows:

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<sup>1</sup> See Order Initiating Investigation in Docket No. 2008-0274. "Hawaii Electric Companies" or "HECO Companies" collectively refer to Hawaiian Electric Company, Inc., Maui Electric Company, Limited, and Hawaii Electric Light Company, Inc. **The Commission did not provide Public Notice of this Docket until October 29, 2008.**

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> See The Restated and Amended Power Purchase Contract for As-Available Energy between Hawaii Electric Light Company, Inc. and Apollo Energy Corporation, dated October 13, 2004 (the "RAC"). The RAC was approved by the Commission in Docket No. 04-0346, In the Matter of the Application of Hawaii Electric Light Company, Inc. for Approval of a Restated and Amended Power Purchase Contract with Apollo Energy Corporation, and a Commission determination that the HELCO-Owned Interconnection Facilities can be constructed above the surface of the ground, pursuant to Hawaii Revised Statutes sec. 269-27.6(a). On December 5, 2005, Apollo Energy Corporation's interest under the RAC was assigned to Movant. Consequently, Movant has replaced Apollo Energy Corporation ("Apollo Energy") as a party to the RAC.



Tawhiri Power LLC  
551 Pilgrim Drive, Suite D  
Foster City, California 94404

All correspondence related to this Docket should be sent to:

Sandra-Ann Y.H. Young  
Attorney at Law, A Law Corporation  
1050 Bishop Street, #514  
Honolulu, Hawaii 96813

Harlan Y. Kimura  
Attorney at Law, A Law Corporation  
Central Pacific Plaza  
220 South King Street, Suite 1660  
Honolulu, Hawaii 96813

and

Mr. Anthony B. Pace  
Tawhiri Power LLC  
551 Pilgrim Drive, Suite D  
Foster City, California 94404

3. Nature of Movant's Rights.

The Commission in initiating this investigation has invited any interested individual, entity, agency, or community or business organization, to file a motion to intervene or participate without intervention in this Docket. Movant is a QF that sells its wind-generated energy to Hawaii Electric Light Company, Inc. ("HELCO") pursuant to the terms and conditions of the RAC.<sup>5</sup> Therefore, Movant qualifies as an interested entity and may intervene in this Docket.

4. Nature and Extent of Movant's Property, Financial, or Other Interest.

Movant is a QF that sells its wind generation to HELCO under the RAC.<sup>6</sup> Pursuant to the terms of the same, Movant is contractually obligated to provide HELCO with energy until 2027

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<sup>5</sup> Id.

<sup>6</sup> Id.

from its Pakini Nui Wind Farm.

The instant Docket may adversely affect Movant's property and financial rights because the Decoupling Mechanism may: (a) shift some of the accounting risks and losses to Independent Power Producers ("IPPs") such as Movant should the collection losses and/or administration costs be allocated to them; (b) serve as a disincentive for the HECO Companies to acquire additional renewable energy from IPPs depending upon the economic considerations integrated therein; and (iii) decrease revenues and increase risks for IPPs with Power Purchase Agreements ("PPAs") if the transmission and distribution energy losses are assigned to them. Therefore, Movant should be granted intervention to protect its property and financial rights.

5. The Effect of the Pending Order as to Movant's Interests.

If the Commission implements a decoupling mechanism which would increase the risks and losses to IPPs, and also serve as a disincentive for the HECO Companies to secure more renewable energy from IPPs, such a decoupling mechanism would have a direct and immediate adverse affect on Movant and therefore, negatively affect its ability to maintain a viable business in Hawaii and do violence to the purposes and intent of the Comprehensive Agreement. In other words, the HECO Companies' commitment "to integrating the maximum attainable amount of wind energy on their systems" would be sabotaged by such a decoupling mechanism.<sup>7</sup>

6. Other Means Available Whereby Movant's Interests May be Protected.

Movant has no other means but intervention to protect its unique property and financial interests. To not grant Movant's Motion to Intervene would deny it of its due process rights.

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<sup>7</sup> See Comprehensive Agreement at 3.

7. Extent to Which Movant's Interests Would be Represented by Existing Parties.

The Movant's interests cannot be fully represented by any of the existing parties in the Docket because none of those parties share the same property and financial interests as Movant. Neither the HECO Companies nor the Consumer Advocate currently has a PPA to provide energy to a regulated utility. They clearly do not share Movant's interest in protecting its property and financial interests to ensure that it may continue to provide renewable wind energy to HELCO in an economically viable manner and to promote wind energy in the State of Hawaii.

8. Movant's Intervention Will Assist in the Development of a Sound Evidentiary Record.

Movant has provided HELCO with renewable wind energy since 2007 and, thus, possesses the experience and background needed to assist the Commission in developing a sound and accurate evidentiary record. Consequently, permitting Movant to intervene would ensure the Commission's decisions being just and reasonable, and meet the objectives of the Comprehensive Agreement to promote wind energy in Hawaii.<sup>8</sup>

9. Extent to Which the Movant's Intervention Would Broaden the Issues or Delay the Proceedings.

Movant's intervention will not unduly broaden the issues or unduly delay the proceedings. In fact, Movant offers a unique perspective to this Docket because: (a) it has been providing HELCO with renewable wind energy since 2007; (b) its Managing Member, Apollo Energy, has been a part of the renewable wind energy community in Hawaii since 1994<sup>9</sup>; and (c)

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<sup>8</sup> Movant's predecessor (i.e. Apollo Energy) began negotiations with HELCO to provide wind power in 1999. Thus, Movant is very familiar with the HECO Companies facilities and Operations and the Hawaii Energy Community.

<sup>9</sup> Apollo Energy owned and operated the Kamao'a Wind Farm located in at South Point Area on the Island of Hawaii since 1994.

its principals have a long history and commitment of bringing renewable wind energy to Hawaii.<sup>10</sup> Therefore, as an active Intervenor, Movant will be able to assist the Commission in formulating its decisions in a timely, just and reasonable manner. Moreover, Movant seeks to ensure a comprehensive examination of the issues involved in this Docket is made in order to meet the objectives of the historic Comprehensive Agreement.

10. Movant's Interests Compared to the General Public.

The Movant has unique property and financial interests, and an intimate knowledge of being a QF providing renewable wind energy to HELCO under its RAC since 2007. Furthermore, its principals have been involved with the renewable wind energy community in Hawaii since 1983. None of these attributes of Movant is shared by the general public.

11. Movant's Position.

Movant as a QF providing renewable wind energy to HELCO has vital property and financial interests requiring it be made a party in this Docket. Exclusion of Movant from participation herein would deny it of its substantive due process rights. Additionally, the ability of Movant to continue to provide renewable wind energy to HELCO and jobs to its employees on the Big Island depends upon the specifics formulated into the Decoupling Mechanism in order that it receive a fair and reasonable rate for its renewable wind energy, and an opportunity to be heard when government agencies take actions that may adversely affect its property and financial rights. Although "Decoupling, as asserted by its proponents, has the benefits of encouraging the substitution of renewable resources, distributed generation and energy efficiency for the utility's fossil fuels production (by reducing a utility's disincentive to promote these types of resources

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<sup>10</sup> The principals of both Movant and Apollo Energy were involved with the prior owners of the Kamao'a Wind Farm since 1983.

and programs), while simultaneously protecting a utility's financial health from erosion as these types of programs go into effect"<sup>11</sup>, it is essential that Movant be allowed to intervene as a party in this Docket to ensure that the IPPs' interests are adequately protected and represented. Alternatively, if the Commission is not inclined to grant Movant intervenor status, Movant respectfully moves the Commission to at least grant it Participant status and permit it to submit Position Statements and/or Testimony.

Movant does not request a hearing on this Motion.

### CONCLUSION

WHEREFORE, Movant respectfully moves the Commission to grant its Motion to Intervene, or, alternatively, to grant it Participant status and permit it to submit Position Statements and/or Testimony.

DATED: Honolulu, Hawaii, November 17, 2008.

  
SANDRA-ANN Y.H. WONG,  
HARLAN Y. KIMURA

Attorneys for Movant  
Tawhiri Power LLC

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<sup>11</sup> See, Order Initiating Investigation, *supra* note 1, at 2-3.

STATE OF HAWAII )  
 ) ss  
CITY AND COUNTY OF HONOLULU )

1. I am one (1) of the attorneys of record for Movant Tawhiri Power LLC herein and made this declaration based upon personal knowledge gained in that capacity.

I, HARLAN Y. KIMURA, do declare under penalty of law that the foregoing is true and correct.

HARLAN Y. KIMURA

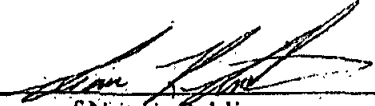
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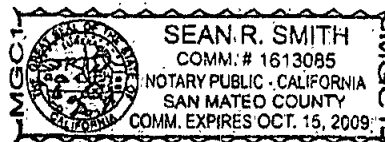
STATE OF CALIFORNIA                    )  
  )     SS.  
COUNTY OF SAN MATEO                )

Anthony B. Pace, being first duly sworn, deposes and says: I am the Chief Executive Officer of Apollo Energy Corp. and Apollo Energy Corp. is the Managing Member of Tawhiri Power, LLC; that I have read the foregoing Motion to Intervene and that the same are true and correct to the best of my knowledge and that I have the authority to sign on behalf of Tawhiri Power, LLC.

  
\_\_\_\_\_  
ANTHONY B. PACE

Subscribed and sworn to before me  
This 17<sup>TH</sup> day of NOVEMBER, 2008

  
\_\_\_\_\_  
Name of Notary Public:  
Notary Public, State of California  
My commission expires: OCT. 15, 2009



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene was duly served on each of the following parties via hand delivery or United States Mail, postage prepaid, as set forth below:

CATHERINE P. AWAKUNI (Via hand-delivery)  
EXECUTIVE DIRECTOR (2 Copies)  
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DATED: Honolulu, Hawaii, November 17, 2008.

  
\_\_\_\_\_  
SANDRA-ANN Y.H. WONG  
HARLAN Y. KIMURA

Attorneys for Movant  
Tawhiri Power LLC

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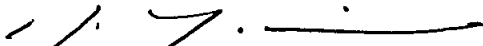
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